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OFFICE OF PETITIONS

In re Application of :
Yevgeniy Eugene Shteyn :
Application No. 09/433,257 : ON PETITION
Filed: November 4, 1999 :
Attorney Docket No. PHA-23.782 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 18, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned as a result of petitioner's failure to reply to the January 9, 2006 Office action which stated that the appeal brief filed on September 1, 2005 was not entered because it was not signed. As the reply appeared to be *bona fide*, a period of one (1) month or thirty (30) days from the mailing date of the Notice was set within which to submit a signed appeal brief. As no reply was filed within the time period set, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal is, by operation of law, dismissed and the proceedings as to the rejected claims terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on February 20, 2006. See MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C). The instant petition lacks item (4).

A terminal disclaimer (and fee) is required for a utility or plant application filed on or after June 8, 1995, but before May 29, 2000, where the application became abandoned (1) **during appeal**, (2) during interference, or (3) while under a secrecy order. The reason being that utility and plant applications issuing on applications filed on or after June 8, 1995, but before May 29, 2000, are eligible for patent term extension under former 35 U.S.C. 154(b) (as a result of the Uruguay Round Agreements Act (URAA)). If such an application is abandoned (1) during appeal, (2) during interference, or (3) while under a secrecy order, the patentee of a patent issuing from such an application is eligible for patent term extension for the entire period of abandonment. The requirement for a terminal disclaimer for these situations will make certain that any patent term extension obtained for the period of abandonment while the application is under appeal, interference, or a secrecy order will be dedicated to the public.

As this application became abandoned while under appeal, an appropriate terminal disclaimer (and fee) must be submitted, along with a renewed petition under 37 CFR 1.137(b) (no additional petition fee is required) to effect revival of this application.


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions